UMASS/AMHERST
312066 0367 3173 2

Massachusetts Bar Association

Address by Margaret H. Marshall

Chief Justice

Supreme Judicial Court

January 25, 2003

MASS KFM 2481 .M37 2003
Marshall, Margaret H.
Massachusetts Bar
Association address

DATE DUE

This item may be kept
14 DAYS
IT MAY BE RENEWED
ONLY ONCE

Thank you, President Vrabel, members of the Massachusetts Bar Association, and distinguished guests for the opportunity to address you once again at your January conference.

The month of January, as many of you know, is named for the Roman god Janus. He was the god of beginnings, the guardian of exits and entrances. His unique gift was the ability to look behind to the past and ahead to the future at the same time. The legend of Janus, so fitting for this new year, reminds us that as we fix our sights on new horizons, we carry forward what is best in our history.

Carry forward what is best in our history, at a time when we – lawyers, judges, citizens – face a particularly challenging year in our Commonwealth, and in our nation. More than one thoughtful commentator has referred to this as the worst era since the Great Depression. In the Judiciary we are working, working hard, to bring necessary changes to our court system to meet those challenges. We do so in concert with people of tremendous goodwill and talent from all parts of the Commonwealth. These <u>are</u> difficult times. Who knows better than the members of this Association? The work of many of you has, I know, been affected by law firm closings, down-sizing and reorganizations. Or if you have not been directly affected by these events, you surely know someone who has. These are indeed difficult times.

But the current crisis also presents opportunities for change, and change for the better. We will embrace that challenge. We will work together to re-shape the way justice is delivered in Massachusetts. As we do so, we will carry forward the core mission of the Judiciary. We will look ahead, boldly, to fulfill that mission more effectively.

What is the Judiciary's core mission? Stated most simply, we assure the peaceful and fair resolution of disputes. It is our constitutional obligation to safeguard the rights of the people through the unbiased, evenhanded application of our laws. The assurances of fair, nonviolent dispute resolution and of the steadfast application of the rule of law make possible our security, our

prosperity, and our social and individual freedoms.

It is particularly during difficult times of great upheaval and concern that the core mission of our Judiciary must not be compromised. And today I pledge to you, as your Chief Justice, that I will continue to call on every resource, I will continue to do everything in my power, to preserve the ability of our judicial branch to perform its constitutional duties, faithfully and completely.

Make no mistake, even under the best of circumstances, the act of doing justice is difficult. Justice Benjamin Cardozo said it best when he remarked, "It is when the colors do not match, when the references in the index fail, when there is no decisive precedent, that the serious business of the judge begins."[1] Every year, well over one million individuals, businesses, and government agencies bring their conflicts to our courts. Each case presents its own unique palette of mismatched colors, its own spaces where the "references in the index" will fail. Yet common to each dispute is a plea for fairness and justice. We are a society changing at warp speed. New technology, shifting family roles, multiculturalism, and other profound developments are testing and testing again our most basic assumptions about human conduct. Inevitably, the most complex issues of our day make their way to the courtroom. I am proud of the way that, every day, in courtrooms across our Commonwealth, Massachusetts judges bring to the bench fidelity to the rule of law.

I am equally proud of the "unsung heros" of our judicial system: the men and women who assist our judges, clerk-magistrates, and registers of probate behind the scenes. Who are they? Paula Vizard is a 22-year veteran of the Probation Office working in the Suffolk Superior Court. She is a remarkable officer doing remarkable work, way beyond the call of duty. She may be found each Sunday morning, her day of rest, at the Boston office of STEP, the office of Sobriety Treatment Education and Prevention. There, beginning in the early morning, she meets with 40 or more

---

[1] Benjamin N. Cardozo, The Nature of the Judicial Process, 20-21 (1921).

Digitized by the Internet Archive
in 2015

https://archive.org/details/massachusettsbar00mars

probationers who attend on Sunday because they are unable to obtain child care during the week. Paula Vizard brings to working parents who are substance abusers the same resources available to other offenders, at considerable cost to herself. She embodies the most compassionate, humanitarian face of our criminal justice system. Please join me in recognizing this remarkable woman, Paula Vizard.

There are countless women and men like Paula who work in the Judiciary, who give selflessly of their time to make justice a reality. Despite all of their hard work I would be less than frank if I did not state plainly what you all know: the delivery of justice is approaching the danger zone in Massachusetts. It is not the adjudicative work of judges that is threatened; it is the way that justice is delivered. We have talented, committed, hardworking people laboring within a structure that is ill-suited to meet the demands of this decade. It is a structure that poorly serves the day-to-day requirements of justice, and produces frustration, even despair.

On the most immediate level, the Judiciary faces a budget emergency that has exposed with ruthless clarity the shortcomings in our unwieldy management structure. Last year I predicted to you that proposed reductions in the Judiciary's budget for fiscal year 2003 would severely strain our court system. They have. You are the lawyers who practice law in our courts every day. You now wait longer for hearings to be scheduled, juries to be empaneled, and files to be located. You know only too well the practical consequences of our deep funding cuts. Before coming to the bench I spent many years in private practice. I am keenly aware that steep reductions in the Judiciary's budget affect not only judges, court personnel, and litigants, but all of you whose professional lives center around practice in our courts.

Consider these circumstances: over the past two fiscal years budget cuts have meant that over 1,000 women and men have left the judiciary. Attrition, early retirement, and a virtual hiring

freeze have left the remaining staff in many courthouses stretched thin, with extended work schedules to get the job done.

Let me share with you one example, one from among many. Paula M. Houston is a Case Coordinator in the Lowell District Court, one of our busiest courts. Each day, almost every day, women and men fleeing the horrors of domestic abuse come to the court to seek protection. In 2002 alone, approximately 1,700 people came to the Lowell District Court seeking protection under Chapter 209A, our domestic violence statute. They came because they were afraid, they came because their lives were in danger, and because they trusted our judicial system to address their circumstances with sensitivity and respect. Paula Houston handled the entry of each of the 1,700 cases into our justice system. This untenable burden has been assumed by her because the Lowell District Court has lost 50% of its support staff due to budget restrictions. Paula is now the only person in the office who handles domestic abuse cases. She handles each and every case with care, accuracy, courtesy, and speed. Without seeking recognition, without complaint, she continues to do this important, often wrenching work, day after day after day. Please join me in saluting Paula Houston.

Today under-staffing is common throughout our court system. The dramatic reduction in court staffing was not the result of careful planning on the part of the Legislature, or of the Judiciary. Over 900 employees left for their own reasons, with the result that departures were random and haphazard, with unbalanced and inequitable impacts. Some courts have had to reduce the hours that they serve the public. Most courts no longer mail notices and other correspondence to attorneys and litigants unless required by law. Some courts do not have a sufficient number of probation officers to monitor every offender. Other courts have instituted priorities for issuing warrants, causing delays in many cases. It is no longer exceptional that trials are scheduled far into the future because of a

COMMONWEALTH OF MASSACHUSETTS
HAMPSHIRE LAW LIBRARY
COURTHOUSE - 99 MAIN STREET
NORTHAMPTON, MASS. 01060

shortage of interpreters or court reporters. Each one of these is a blow to the effective delivery of justice. Just as importantly, they have undermined the public's perception of our ability to do justice, the public's confidence in our courts.

In recent weeks I have met with the Governor and Legislative leaders, and briefed them on the nature and impact of the personnel reductions that have resulted in the uneven and unfair distribution of court resources. They recognize the problem. They understand that the allocation of resources within the Judiciary must proceed in a rational and coherent manner. I welcome their commitment to work with me to address this critical situation.

To be sure, the fiscal crisis in the Commonwealth's courts reflects a nationwide dilemma. The consequences of economic hard times are broad and deep:

▸ Oregon courts have temporarily shut their doors to all small claims cases and all so-called "quality of life" misdemeanors – a category that includes shoplifting, criminal trespass, and prostitution.

▸ Utah courts have down-sized juvenile offender programs, and stopped the electronic monitoring of some youthful offenders.

▸ Oklahoma has initiated a 2.5 per cent across-the-board paycut for all court employees, except elected judges.

▸ Colorado is contemplating closing courts for a month or more and doubling civil filing fees.

And I could go on. That the financial condition of Massachusetts has not led us, yet, to such drastic measures is cold comfort to those who depend upon the courts to resolve their disputes and to define, secure, and enforce their rights.

I well recognize there is not enough money in our State treasury to meet all of the agreed

upon needs of the people of Massachusetts. I recognize that a faltering economy haunts us at the very moment that the Federal government is shifting more and more responsibility to the States. And I well recognize that the Commonwealth's fiscal situation is likely to get worse before it gets better.

The policy choices facing the Legislature and the Governor are stark and unpalatable. Some of the decisions they are being called upon to make are deeply troubling. I know that the other branches of government are working earnestly and creatively to make the best choices from limited options. I have personally assured the Governor, the Senate President, and the Speaker that we in the Judiciary recognize and accept our responsibility to shoulder our fair share of the weight of this budget crisis.

At the same time we must be clear about exactly what is at stake. What kind of court system we *might* have is a matter for the people and the government to determine based on many considerations. What kind of court system we *must* have has been determined by our Constitution. Justice for all is not an empty slogan; it is a Constitutional imperative. The Judiciary cannot function with funding inadequate to meet the minimum standards of fairness and justice guaranteed by our Constitution. Supreme Court Justice Joseph Story, a Massachusetts native, stated many years ago, "Upon the *actual* administration of justice . . . especially in free governments, must depend the welfare of the whole community."[2]

It is a grave mistake to view the Judiciary's need for adequate resources as competitive with the needs of the people . . . to contrast the needs of the Judiciary against the needs of children, the disabled, and the elderly, for instance. Or against the needs of our cities and towns, of firefighters

---

[2] Joseph Story, Miscellaneous Writings 453 (1835), quoted in The Wisdom of the Supreme 257 Court (ed. P.E. Jackson 1962).

or police officers. The needs of the Judiciary do not exist, they have no meaning, apart from the needs of the people.

A strong Judiciary is vital to our democracy, and that strength comes from the clarity of its organizational structure, not less than from the integrity of its judges and employees. Today the strained financial situation has done more than put stress on the system; it has exposed the fault lines of our existing management. At least three elements distinguish effective organizations, both inside and outside of government. First, there must be clear lines of authority, the necessary predicate to accountability. Second, there must be a rational system of resource allocation. Last, but critical, there must be uniform, objective performance requirements and measurements. On all three scores, our Judiciary is woefully inadequate.

In the eyes of many, responsibility for the day-to-day operations of our justice system is mystifying. In far too many instances, there is no sure way to know who, exactly, is in charge of what. And as a consequence, it is difficult to know to whom to turn when something goes wrong.

The confusion is understandable. Under our complex administrative scheme, employees often are supervised by more than one supervisor; they must answer to different authorities concerning certain aspects of their jobs. This complex scheme was first enacted in the late 1970's and modified periodically thereafter. At the time, it represented a huge administrative leap forward from the balkanized system of individual county courts that it replaced. But our fractured organizational structure has outlived its utility. It has become a structural template for inter-branch miscommunication, duplication of effort, and a host of other debilitating inefficiencies. It is no wonder that people of good will often feel frustrated when seeking an answer to the most fundamental question of management: who is in charge?

The second element is the rational distribution of available resources. I said earlier that the

Judiciary's funding is distributed in uneven fashion. For a complicated set of reasons that often is not obvious, certain courts are adequately staffed, while others barely limp by on inadequate resources. By statute, the Judiciary, with narrow exceptions, has limited, very limited, authority to transfer funds between or among court departments to correct such situations. Especially now we need the authority to move resources where they are most needed. Attrition will continue in haphazard fashion. During this fiscal crisis, we must be able to triage. That means having the flexibility to respond immediately.

Over the longer term we need, of course, to have effective tools to measure, analyze, and improve how we deliver justice in every courtroom. Consider the issue I just raised: the need to establish, at base, minimum across-the-board funding that allows each court in the Commonwealth to provide the same appropriate level of core services. This task requires more, much more, than simply measuring the number of employees or the dollar amounts received by one court against the amounts received by another. As Justice James McHugh recently pointed out, "the trial court simply does not have the information it requires to make accurate and sound managerial decisions."

As to this aspect of effective management I am delighted to inform you that we finally are poised to reverse this dismal situation. As reported yesterday, Massachusetts is moving to the forefront of automated information management of State courts with its new electronic records system, *MassCourts.* When fully operational early next year – a year ahead of schedule and significantly under budget – *MassCourts* will provide the largest, most comprehensive centralized court database in the nation.

At last we will have the capacity to implement uniform performance requirements. We will be able to measure outcomes in each court from an analysis of cases filed and disposed, individual and court caseloads, filing trends, and other data that will permit us to pinpoint problem areas, and

respond to them quickly.

Our courts have been criticized by thoughtful observers, including members of the Executive and Legislative branches, for being inefficient. I welcome that criticism. I learn from it. I know we can do better. Rather than taking the initiative on matters of court governance, too often we have been reactive. Rather than moving forward based on a model of best practices, too often we proceed piecemeal. Good management does not occur by happenstance. We have to stop doing business as usual. We need to lead in new directions.

We must, we will, articulate our core adjudicative and administrative responsibilities and how best to achieve them. We must, we will, do this both forcefully and cooperatively. I start from the premise that no person, no branch of government, no institution is to "blame" for the complex tangle of events that have brought us to the current management crisis. The need for good communication, mutual respect, creativity, and resolve among the branches of government to rebuild the Judiciary is as great as it has ever been. As is always the case, a new administration presents exciting new opportunities. Governor Romney and the Legislature have encouraged every branch and agency to re-envision and to reformulate its operations, in order, in the Governor's words, "to shape state government for the realities of our new century." I embrace this opportunity to lead the judiciary in this shared purpose.

The current crisis in our courts has stimulated vibrant, creative discussion about reform in our branch, as elsewhere. There seems to be uniform agreement that change is both necessary and feasible. The yearning for change, the thirst for it, is palpable. We must, we will, seize this moment to stop doing business as usual, fix what is not working, and make what is working so well work even better. The Massachusetts courts can be, will become a national model of excellence.

One area of continued excellence in our courts has been our increasingly sophisticated

mechanisms of judicial accountability, admired nationwide. Most prominent among them is the Commission on Judicial Conduct. One of my priorities when I became Chief Justice three years ago was to continue the work of Chief Justice Wilkins to strengthen the Commission on Judicial Conduct. The members of the Commission – from the bar, the bench, and the public – bring to their difficult task wisdom, experience, commitment, and above all reverence for the solemn work of the judicial office.

As another tool of accountability, the Justices have aggressively moved forward with a comprehensive program of judicial performance evaluation. To date, the performance of approximately 150 judges, one-third of all trial court judges, has been evaluated by court personnel, attorneys, and jurors who have responded to surveys sent out by the Supreme Judicial Court. After each evaluation every judge meets with his or her trial court Chief Justice to review the results, identify areas of performance that need to be strengthened, and develop plans to do so. Recently I met with the members of the Committee on Judicial Performance Evaluation, and they asked me to emphasize how important it is for you, attorneys, court staff, jurors, to complete and return the questionnaires you receive.

Let me outline briefly some of the other accountability initiatives. Last January, I promised you that the we would enlist the assistance of experienced managers outside the court system to examine and make suggestions about the foundational structures of our court administration. In August 2002, the Justices established a Visiting Committee on Management in the Courts to assess our managerial practices and policies, and to make recommendations to improve the administration of justice in the Commonwealth. Headed by Father J. Donald Monan, S.J., the Chancellor of Boston

College, the eight members of the committee[3] collectively have decades of experience successfully managing large complex institutions, both public and private, and planning for and implementing change. I am grateful to each of them for donating their valuable time to assist us.

The Visiting Committee is deep into its work. Committee members have interviewed jurists, clerks, registers, court staff, lawyers, legislators, and citizens from across the Commonwealth. They have visited courthouses, reviewed court policies and procedures, examined court finance structures, consulted with experts, and assessed best practices from courts nationwide. McKinsey & Co., the worldwide management consulting company, volunteered to help, and has contributed hundreds of hours, all pro bono, to the Visiting Committee, sharing its expertise, as well as providing critical research and logistical assistance.

The Visiting Committee anticipates that it will issue its report in late February, on time as promised. The full report will be made public, and the public will have an opportunity to air its views about the Committee's findings and recommendations. I expect the Visiting Committee's recommendations may include not only a significant change in management practices, but also the need for structural reforms, some of which may require legislative approval. Surely any recommendations will be given the most serious consideration, and the Justices will do everything in our power to ensure that any recommendations we adopt will be promptly and fully implemented.

The Visiting Committee is not the only harbinger of change in the administration of justice.

---

[3] The members of Visiting Committee on Management in the Courts are: **Chairman J. Donald Monan, S.J.**, Chancellor, Boston College; **Vice-Chairs Patricia McGovern**, Executive Vice President for External Affairs, CareGroup Healthcare System, and **William C. VanFaasen**, Chairman, President and Chief Executive Officer, Blue Cross and Blue Shield of Massachusetts; **Charles D. Baker**, Chief Executive Officer, Harvard Pilgrim Health Care; **Wesley Marple**, Professor, Finance Insurance Group, Northeastern University; **Ralph C. Martin, II**, Bingham McCutchen LLP; **David Mazzone**, Senior Judge, United States District Court; and **Dorothy Terrell**, Senior Vice President, Worldwide Sales, President Services Group, Natural MicroSystems Corporation.

Last spring, together with Chief Justice for Administration and Management Barbara A. Dortch-Okara, the Justices convened a Budget Advisory Committee, comprised of judges and other representatives of the trial courts and the Office of the Commissioner of Probation, to review the operations of the Trial Courts and identify areas to reduce costs. They made and will continue to make recommendations of enormous value.

We have begun other changes to meet the present challenges. I have initiated regular meetings with Chief Justice Dortch-Okara and the Chief Justices of all of the Trial Courts and the Appeals Court to focus intently, and exclusively, on managing the court's budget in this time of fiscal emergency. All of the Chief Justices recognize that we must work together to foster solutions to challenges confronting our entire Branch. As we move forward, we will be reaching out to Clerk-Magistrates and Registers of Probate, who have already been immensely helpful in providing advice and recommendations to the Budget Advisory Committee, and more directly to Chief Justice Dortch-Okara and me as they participate in our common efforts to identify the most effective areas for change. We recognize that it is through concerted and creative teamwork that we will shape the judicial branch of the future.

And while system-wide planning to prepare for Fiscal 2004 is underway, the Justices continue to identify and address other areas of specific concern. Let me mention one. For years, judges, lawyers, and litigants have been concerned about the accuracy and timeliness of trial-court transcripts. Transcripts that are unduly delayed, that are incomplete or inaccurate, seriously compromise the delivery of justice at every level of our court system. Last month, the Justices moved decisively to put an end to this intolerable situation by convening a Study Committee on Trial Transcripts, comprised of members of the Judiciary, court personnel, and the private bar. The Committee's mandate is to determine how the timeliness and accuracy of trial transcripts may best

be improved, including through the use of new technology. Appeals Court Justice Mark Green has agreed to chair the Committee, and Justice Robert Cordy will serve as the Committee's liaison to the Supreme Judicial Court. MBA members Carol Donovan and Thomas Carey have agreed to serve on the Committee, and I am sure they will all make important contributions to its work. The Committee will meet for the first time next week and by the beginning of summer will report its findings for public comment. We have taken an important step toward ensuring the prompt disposition of appeals.

I have identified some of the initiatives the Judiciary has taken over the past year to reshape ourselves for the new century. But comprehensive and effective change in the administration of justice cannot be accomplished by the Judiciary alone. We have no constituencies, no voting blocs, that we can turn to in our efforts to secure adequate funds to operate or to secure any legislation needed for institutional reforms. But the Judiciary has always had a host of faithful and reliable allies. And the Massachusetts Bar Association has long been in the forefront of those ranks. I thank you for all that you have done to uphold the independence and integrity of the Massachusetts Judiciary. I ask you now, as leaders of the bar, to raise your voices in support. Work with us to make the case for a strong and vibrant court system that can meet the formidable challenges of the 21st Century.

All of us want better government. All of us want more perfect justice. And all of us, working together, will achieve these goals. Our personal, community, and economic freedom depend on our ability to do so. We will move forward to accomplish together what none of us can accomplish alone.